IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

LA. App. No. 1432 of 2000(C)

LAR.424/1992 of ADDL. SUB COURT, NORTH PARAVUR
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APPELLANTS/ CLAIMANTS:
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1. SIVARAMAN NAIR, S/O. KUNJU NAIR,
KUZHUPPILLIL VEETTIL, KODINJOOR KARA,
PUTHENCRUZ VILLAGE.

2. VISWANATHAN, S/O. PONNAMMA,
KUZHUPPILLIL VEEDU, KODINJOOR KARA,
PUTHENCRUZ VILLAGE.

BY ADV. SRI. S. VIDYASAGAR

RESPONDENTS/ RESPONDENTS:
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1. STATE OF KERALA.

ADDL 2. HINDUSTHAN ORGANIC CHEMICALS LTD.
PHENOL PROJECT, AMBALAMUGAL.

BY ADV. SRI. U.K. RAMAKRISHNAN
SRI. E.K. MADHAVAN
SRI. P.V. LOHITHAKSHAN
SMT. P. VIJAYAMMA
SMT. UMA GOPINATH
SRI. V. KRISHNA MENON
SRI. DEVIDAS.U.K
SRI. SANDEEP. E.
GOVERNMENT PLEADER SRI. K.V. MANOJKUMAR.
SRI.RAJAN JOSEPH, ADDL.A.G.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO. 1432 OF 2000

Dated this the 29th day of October, 2007.

J U D G M E N T

Kurian Joseph, J.

This is an appeal filed against the judgment and decree in L.A.R. No. 424/1992 on the file of the Additional Sub Court, North Paravur. Acquisition is for the purpose of Phenol Project at Ambalamugal. Section 4(1) notification is dated 05.10.1988.

2. The grievance is only with regard to the valuation for the structures. The claimants have a contention that going by the reports of the Advocate Commissioner, which is marked as Exhibits A2 and A2(a) in O.S. No. 1186/1990 on the file of the Munsiff Court, Ernakulam, they are entitled to get a further enhancement of Rs. 74,057/- and consequential benefits.

3. It is seen that the reference court rejected the reports of the Advocate Commissioner on the ground that the suits were withdrawn soon after the filing of the report of the Advocate Commissioner without the defendants even getting an opportunity to dispute the veracity of the reports. We find that

the court below is justified in taking such a stand, since apparently the intention of the parties was only to secure the report of the Advocate Commissioner, which was not accepted as a piece of evidence in the said case for any purpose.

4. However, we find that the reference court has not granted any further enhancement over the value fixed by the Land Acquisition Officer. The value fixed by the Land Acquisition Officer is only at PWD rates. It is brought to our notice that this Court has consistently granted 20% enhancement over the value fixed by the Land Acquisition Officer at PWD rates, since PWD rates do not reflect the actual value of the materials and their current market value.

5. Learned counsel for the additional second respondent requisitioning authority submitted that the reference court ought not have granted value of the structure as well as the land value. But it has to be seen that it is not the capitalization method that is followed. The acquired property is valued on the basis of market value and in the process, as entitled under Section 23(1) secondly, the value of the structure has been granted, which is perfectly in order.

Accordingly, we partly allow the appeal holding that the claimants shall be entitled to a further enhancement of 20% of the value fixed by the Land Acquisition Officer towards value of the building and the consequential statutory interest thereon.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE

smp

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. NO. 1432 OF 2000

J U D G M E N T

29.10.2007